IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8394 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER,RAJKOT

Versus

PRAKASH LAXMIDAS GUJJAR

Appearance:

1. Special Civil Application No. 8394 of 1994

MR HC PATEL ASST GOVT PLEADER for Petitioner No. 1

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/2002

ORAL JUDGEMENT

#. Heard Mr.H.C.Patel, learned AGP appearing on behalf of the petitioner and Mr.A.K.Clerk, learned advocate for the respondent.

#. The petitioner has challenged the award passed by the Labour Court, Rajkot in Reference No.1487 / 1988 dated 27th July, 1993. The labour court has set aside the termination order dated 30th June, 1985 and granted reinstatement in service on original post within period of one month from the date of publication of the award and also directed to the petitioner to pay full backwages with effect from 30th June, 1985 till the workman is reinstated in service by the petitioner.

#. Learned AGP Mr.H.C.Patel on behalf of the petitioner has raised contention that the date of termination is 30th June, 1985 and the dispute was raised by the workman concerned in the year 1988 and thereafter Reference was made to the Labour Court on 15th June, 1988. Therefore, the Reference is bad on the ground of delay and the labour court has committed gross error in adjudicating such delayed and belated Reference. The second contention raised by learned AGP Mr.H.C.Patel that the respondent workman was appointed as Daily Wager for a limited period and he was not appointed on the post of Typist because for appointing any person on the post of Typist, prescribed Recruitment Rules and proper procedure require to be followed by the petitioner and therefore the respondent workman was not appointed on the post of Typist but he had worked as Labourer with the petitioner. He also submitted that the services of the respondent workman was not terminated by the department but the workman left the job without informing the Department. He also submitted that the respondent workman has not completed 240 days continuous service and therefore Section 25-F was not required to be followed by the petitioner. He also submitted that the labour court has committed error in granting full backwages with effect from 30th June, 1985 though the Reference was made on 15th June, 1988. He also submitted that the daily wager, otherwise also not getting work regularly and therefore, he is not entitled to full backwages of the interim period. He also submitted that being technical breach which has been believed by the labour court, the workman is not entitled to full backwages of the interim period.

#. Learned advocate Mr.A.K.Clerk appearing on behalf of the respondent workman has submitted that the workman concerned has worked with the petitioner for a period from 1st May, 1984 to 30th June, 1985 for total 400 days and thereafter his services were terminated by the department. At the time of termination, undisputedly the procedure under Section 25-F of the I.D.Act has not been followed by the petitioner. He also submitted that the

respondent workman was studying in the college in the year 1986 and therefore, he was not aware of the legal procedure and therefore, he has not raised industrial dispute in time. He also submitted that though certain documents were specifically demanded by the workman concerned by submitting application to the labour court but the petitioner has not produced the complete documents before the labour court and therefore, the labour court has rightly drawn adverse inference against the petitioner. In short, his submission is that the labour court has rightly set aside termination order. So far as it relates to back wages part, he also submitted that this Court may exercise discretionary powers in light of peculiar facts of the present case.

#. I have considered submissions made by the learned advocates for the parties. Before the labour court, the respondent workman has filed statement of claim vide Exh.4 and written statement was filed by the petitioner vide Exh.7. Thereafter, one application Exh.8 was filed by the respondent workman before the labour court with a prayer to direct the petitioner to produce relevant record such as attendant registers, salary register of the workman concerned for a period from 1984 to 1985 and original demand notice dated 5th March, 1988 sent by the petitioner to the petitioner. The labour court had directed the petitioner to produce in the Court the attendant register and salary register for the period from 1st May, 1984 to 30th June, 1985 or to file proper affidavit regarding production of the said document. The petitioner has filed objection vide Exh.29 and ultimately some of the documents were produced by the petitioner before the labour court. Thereafter, the workman was examined at Exh.12 and the petitioner examined on Dinesh Shantilal Shah vide Exh.17. Except that no other evidence was led by the other side.

#. After considering the documents as well as oral evidence before the labour court, the labour court has come to the conclusion that in absence of the documentary evidence which required to be produced by the petitioner but they have failed to do so and they submitted an application stating to the effect that they are not able to produce said records as the same not available with the department. In light of this fact, when a specific request was made by written application made by the workman concerned seeking directions on the petitioner to produce relevant records for the period from 1st May, 1984 to 30th June, 1985 relating to the dispute such as attendant register and pay register which shows working

days of the respondent workman and though the order passed by the labour court, despite this, said records not produced by the petitioner. Therefore, the labour court has rightly drawn adverse inference against the petitioner. By relying oral evidence of the workman concerned deposed before the labour court that he had remained in continuous service and completed 240 days with the petitioner for a period from 1st May, 1984 to 30th June, 1985. Thus, the evidence of the workman is not rebutted by the petitioner by producing necessary documents so demanded by the workman concerned. In light of this fact, it is burden upon the petitioner to prove that the workman concerned has not completed 240 days continuous service with the petitioner. The view taken by the Apex Court in case of M/S TANNERY & FOOTWEAR CORPORATION OF INDIA V. RAJ KUMAR reported in 2002 AIR SCW 44. The relevant observations made by the Apex Court in para-3 & 4 are as under :-

"3. Learned counsel for the appellant submitted that the burden of proof lay upon the respondent to establish that he was in the employment of the appellant and had worked for a period of 240 days in a year before termination of his services and no such material was made available. It is clear that neither the respondent produced any material in support of his case, nor to rebut the claim made by him any material was produced by the appellant. It is in these circumstances that the Labour Court came to the conclusion that on appreciation of the material on record such as Exhibit E-1 [Appointment letter] and Exhibit E-4 [the order of termination that the services of the respondent are not required from 20-7-1976] that the respondent had worked with the appellant for 240 days in a year. If that was the material on which the Labour Court placed reliance as no other material was placed by the appellant in rebuttal of the same, we think that the view taken by the Labour Court is in order. Therefore, the High Court was justified in not interfering with the award made by the Labour Court.

4. Inasmuch as material has been made available before us that the respondent was in employment from 27-9-1979 to 16-9-97, it would not be appropriate to grant any backwages for that period. The respondent will be entitled to backwages from 17-9-1997 onwards. Therefore, in

modification of the award made by the Labour Court and affirmed by the High Court with 75 % of backwages, the respondent shall be reinstated with backwages from 17-9-1997 onwards and not for the earlier period. The appeal is partly allowed by modifying the award made by the labour court in these terms."

#. In respect of the contention raised by learned AGP Mr.H.C.Patel that the respondent workman was not appointed on the post of Typist but he was engaged as daily rated worker on muster roll. However, considering the oral evidence which has been produced by the petitioner that in the said register, the respondent workman was appointed in the post of Typist, has clearly made out from the documents of the petitioner. Observations on this issue made by the labour court on page-6 in para-6 of the award in question wherein it is observed that "in this muster roll, the workman has been shown as Typist in the Sub-division of Deputy Executive Engineer". The next contention which has been raised by learned AGP Mr.H.C.Patel in respect of delay part that because of the delay and not to raise the industrial dispute immediately from the date of termination and therefore due to delay and laches on the part of the workman, the labour court ought not have entertained such belated Reference. So far as this contention is concerned, the view taken by the Apex Court in case of U.P.STATE ELECTRICITY BOARD VS. Mahavirsing reported in 1999 [2] CLR pg.7 where the Apex Court has observed that delay of nine years for making a Reference, merely delay does not cease the dispute but the delay aspect can be taken into account at the time of granting final relief and therefore the contention which has been raised by learned AGP H.C.Patel that delayed Reference is bad, cannot be accepted simply on the ground that merely if any delay arose, the Reference cannot be considered to be bad but this delay aspect can be taken care by the concerned Labour Court at the time of granting relief to the workman. It also requires to be noted on more aspect in light of the very contention that written statement Exh.7 filed by the petitioner before the Labour Court wherein no such contention has been raised by the petitioner that due to delay, Reference is bad. Though the written statement runs into twenty five paragraphs but no such contention appears to have raised at the relevant time before the labour court. Therefore, the contention of delay cannot be accepted simply on the ground that the dispute cannot be ceased merely on the ground of delay but it remains in existence therefore, concerned authority has rightly referred the the matter

to the concerned labour court. Learned AGP Mr.H.C.Patel has not raised any other contention except referred to above.

#. In view of above facts, looking to the oral evidence of the respondent workman that he was in service from 1st May, 1984 to 30th June, 1985 with the petitioner and he had completed 240 days continuous service with the petitioner and undisputedly at the time of termination, procedure under Section 25-F has not been followed by the petitioner and therefore, the labour court has rightly come to the conclusion that the workman has not left the service at his own but it was case of termination on the basis of oral evidence of both the parties. It was finding of fact of the labour court on the basis of the oral evidence of the respective parties. In view of this, the labour court has rightly set aside the termination order dated 30th June, 1985 as it is violative of Section 25-F of the I.D.Act, 1947 and for that the labour court has not committed any error while granting reinstatement with continuity of service to the respondent workman. Learned AGP Mr.H.C.Patel is not able to point out any error apparent on the face of the record and any infirmity in the impugned directions issued by the labour court.

#. So far as the directions issued by the labour court in respect of the backwages part, the labour court has committed error while not considering the delay period for backwages and also not considered the fact that the respondent workman was working as daily wager and in all for limited period from 1st May, 1984 to 30th June, 1985. In light of the facts, the labour court ought not have directed full backwages of interim period with effect from the date of termination 30th June, 1985. In above view of the matter, according to my opinion, if backwages awarded by the delay period is set aside and 50 % backwages from the date of Reference is awarded to the respondent workman, will meet the ends of justice.

##. Accordingly, the award passed by the Labour Court, Rajkot in Reference No.1487 / 88 dated 27th July, 1993 is modified to the effect that the respondent workman is not entitled to any amount by way of backwages with effect from 30th June, 1985 till the date of Reference i.e. 15th June, 1988. The respondent workman is entitled to 50 % backwages for the period from 15th June, 1988 till the date of award - 27th July, 1993. In respect of directions issued by the Labour Court granting reinstatement with continuity of service to the respondent workman shall remain intact and the same is

not disturbed by this Court. The award in question shall stand modified accordingly. Rule is made absolute to the extent indicate above with no order as to costs.

##. Learned Advocate Mr.A.K.Clerk appearing on behalf of the respondent workman submits that this Court has issued Rule and granted interim relief in terms of prayer Clause [b] staying operation and implementation of the award in question vide order dated 27th October, 1994 and therefore, from the date of award till date the respondent workman has not been reinstated in service by the petitioner and he has not been given benefit of Section 17-B of the I.D.Act and as a result thereof, the workman has remained without any work and without wages till date from 27th October, 1994 and hence, some suitable directions may be issued on the petitioner to reinstate the respondent workman within some reasonable time and to pay him backwages as per the order of this Court as well as full wages from the date of award to the respondent within some reasonable time.

##. Learned AGP Mr.H.C.Patel submits that some reasonable time will be required by the petitioner so that the petitioner authority can pass appropriate orders in the matter for implementation of the order passed by this Court.

##. In view of above submissions of the learned advocates for the parties, it is directed to the petitioner to reinstate the respondent workman within period of one month from the date of receiving certified copy of this order. It is further directed to the petitioner to pay the backwages as ordered by this Court within period of two months from the date of receiving certified copy of this order. The petitioner is further directed to pay full wages to the respondent with effect from 27th July, 1993 till the date of his actual reinstatement within period of four months from the date of receipt of certified copy of this order.

Date : 11-10-2002 [H.K.Rathod, J.]

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